

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to update the Commission's policies and procedures related to electromagnetic field emanating from regulated utility facilities.

Rulemaking 04-08-020
(Filed August 19, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING CONCERNED RESIDENTS OF BURLINGAME AND LEEKA
KHEIFETS' NOTICES OF INTENT TO CLAIM COMPENSATION**

On December 3, 2004, and January 3, 2005, Notices of Intent to Claim Compensation (NOIs) were filed by Leeka Kheifets, and the Concerned Residents of Burlingame (CRB), respectively. No responses to these NOIs have been received.

This ruling finds CRB and Leeka Kheifets eligible to claim compensation.

A. Background

The Commission's "Intervenor Compensation Program Guide" dated January 2004, identifies the items that must be included in, and provides a template for, an NOI.¹ The necessary items are:

- a. Summary information,
- b. Statement of timely filing,

¹ For NOIs, see pp. 3-7, and pp. 14-16, of the Program Guide, which may be accessed via the following internet link:
<http://www.cpuc.ca.gov/PUBLISHED/REPORT/33691.htm>.

- c. Statement of customer status,
- d. Explanation of significant financial hardship,²
- e. Description of the nature and extent of planned participation,
- f. Itemized estimate of costs of participation, and
- g. Conclusion.

B. Discussion

1. Timely Filing

Under Section 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.”

The first prehearing conference in this proceeding occurred on October 28, 2004. Although Leeka Kheifets served her NOI on November 27, 2004, within the 30-day period, it was not filed with the Commission until December 3, 2004. This difference is apparently due to a mailing problem, and as no parties are prejudiced by the later filing, and no responses to the NOI were received, it is deemed as timely filed.

CRB filed its NOI on January 3, 2005, and a Motion and Declaration For Leave (Motion) explaining why the NOI could not be filed within the 30-day period. CRB explains that it could not reasonably identify issues within the

² Alternatively, this showing may be deferred to the request for an award of compensation.

30-day period as the scoping memo was not yet issued.³ As no party is prejudiced by the filing of CRB's NOI at this time, and as CRB's Motion is unopposed, that Motion is granted. CRB's NOI is deemed as timely filed.

2. Customer Status

Leeka Kheifets represents and advocates for environmental interests, and is qualified to represent consumer interests in this proceeding because she has expertise on the issues relevant to this proceeding. Leeka Kheifets meets the second definition of customer, as set forth in Pub. Util. Code § 1802(b).

CRB explains that it is a consumer advocacy group representing residential ratepayers involving health, safety and reliability issues before the Commission. CRB states it is an unincorporated association, without membership dues, formed in 2003. Dennis Zell, a practicing attorney, states he has been authorized by CRB to represent CRB before the Commission and that the interest of CRB is to improve the process from the perspective of property owners impacted by power line construction. Mr. Zell indicates he has consulted with EMF consultants to determine potential issues, and that he represents CRB on a contingency basis, said contingency being eligibility to obtain reimbursement for attorney fees pursuant to Commission rules.

CRB meets the second definition of customer, as set forth in Section 1802(b).

3. Significant Financial Hardship

Leeka Kheifets states that she cannot afford to participate in this proceeding without an award of fees or costs. In support of the claim of

³ The scoping memo was issued on March 1, 2005.

significant financial hardship, Leeka Kheifets separately filed personal financial information and a motion for a protective order regarding this personal financial information. A ruling addressing this motion will be issued separately. Leeka Kheifets has made a reasonable showing that she may suffer significant financial hardship if she were to participate in this proceeding.

CRB states that none of the individual members of CRB have expressed an interest in paying costs to their representative, Mr. Zell, who also states that he is a member of two-person law firm that cannot pay for his involvement in this proceeding without compensation. Furthermore, CRB explains that the costs of participation, estimated at \$116,255, substantially exceed the average residential electric bills of CRB members. CRB has made a reasonable showing that its representative may suffer significant financial hardship if he were to participate in this proceeding. However, if CRB ultimately requests compensation in this proceeding, the Commission may seek documentation to support CRB's assertions regarding Mr. Zell's financial status.

4. Nature and Extent of Planned Participation

Leeka Keihets expects to participate actively in this proceeding on matters relating to the World Health Organization (WHO) study as it relates to the "low-cost/no-cost" mitigation policies adopted in this proceeding. Leeka Keihets also states she will provide insights into epidemiologic studies and health risks associated with EMFs, areas related to the issue of new scientific information adopted in Rulemaking 04-08-020.

CRB indicates it expects to address matters on mitigation, just compensation to property owners, land use restrictions and planning, and new EMF scientific data. CRB also expects to make recommendations on assessing

new EMF scientific information, prudent avoidance policies, and the Commission's existing policies and rules on EMF mitigation.

As the nature and extent of planned participation by Leeka Keihets and CRB were served before the Scoping Memo was issued, intervenors are cautioned that the Scoping Memo sets forth those issues that will be addressed in this proceeding, and that these Scoping Memo issues may not be consistent with those matters proposed by intervenors. Accordingly, intervenors must demonstrate substantial contribution to the issues ultimately adopted by the Commission in order to receive compensation. Furthermore, intervenors should coordinate with other parties to avoid duplication of effort.

5. Itemized Estimate of Compensation

Leeka Kheifets estimates a total projected budget of \$62,300 for this proceeding. The estimate breaks down as follows:

Description	Amount
Fees - 200 hours @ \$290 per hour	\$58,000
Student Assistant - 100 hours @\$20 per hour	\$2,000
Travel	\$1,800
Telephone and Fax Expenses	\$200
Supply Expenses	\$200
Postage Expenses	<u>\$100</u>
Total Estimated Cost of Participation	\$62,300

Leeka Kheifets satisfactorily presents an itemized estimate of the compensation she expects to request. Leeka Kheifets must fully support her request for compensation, including the reasonableness of the hours spent and hourly rates.

CRB estimates a total projected budget of \$116, 255 for this proceeding. The estimate breaks down as follows:

Description	Amount
Attorney Fees - 175 hours @ \$250 per hour	\$43,750
Expert (1) - 200 hours @ \$180 per hour	\$36,000
Expert (2) - 40 hours @ \$200 per hour	\$8,000
Expert (3) - 40 hours @ \$300 per hour	\$12,000
CRB staff (1) - 100 hours @ \$75 per hour	\$7,500
CRB staff (2) - 65 hours @ \$45 per hour	\$2,925
CRB staff (3) - 65 hours @ \$15 per hour	\$975 ⁴
<u>Expenses</u>	
Postage, Supplies, Graphics, Copies, etc.	\$1,600
Exhibits	\$2,400
Travel, Mileage, Parking, etc.	<u>\$4,200</u>
Total Estimated Cost of Participation	\$119,350 ⁵

* Corrected from NOI.

CRB satisfactorily presents an itemized estimate of the compensation it expects to request. CRB must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

No facts are presented here, or otherwise known, that would suggest a different conclusion regarding the eligibility of each intervenor for purposes of intervenor compensation.

⁴ Corrected from NOI.

⁵ *Id.*

IT IS RULED that:

1. Leeka Kheifets has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that she establish significant financial hardship, and Leeka Kheifets is found eligible for compensation in this proceeding.

2. The Concerned Residents of Burlingame (CRB) has met the requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and CRB is found eligible for compensation in this proceeding.

3. Leeka Kheifets is a customer as that term is defined in Pub. Util. Code § 1802(b).

4. CRB is a customer as that term is defined in Pub. Util. Code § 1802(b), and is an association formed to represent the interest of residential ratepayers in proceedings involving public health, safety, and reliability issues.

Dated March 21, 2005, at San Francisco, California.

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Concerned Residents of Burlingame and Leeka Kheifets' Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated March 21, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.